APPENDIX 1

CHARTER WI COMMENTS
DATED 2/2/05

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 Consumer Banking Association's Petition for Declaratory Ruling with Respect to Certain Provisions of the Wisconsin Statutes and Wisconsin Administrative Code	**CG Docket No. 02-278** **DA 04-3185**

COMMENTS OF CHARTER COMMUNICATIONS, INC.

Wesley R. Heppler
Timothy P. Tobin
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
(202) 659-9750

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Attorneys for Charter Communications, Inc.

SUMMARY

The Commission has enacted a comprehensive regulatory regime that balances consumers' privacy interests with legitimate telemarketing activities. One key aspect of that balancing is the existing business relationship ("EBR") exemption, permitting companies to communicate about new products and services with existing customers who have enrolled in the national do-not-call registry. Wisconsin's telemarketing laws, which are expressly applicable to interstate calls, contain their own EBR exemption that is far more restrictive than the Commission's rules. In contrast to the Commission's approach, Wisconsin prohibits companies such as Charter from educating customers about new services it offers and prohibits any affiliated company from using the EBR exemption.

Commission preemption of those Wisconsin laws that conflict with Commission rules is warranted for a number of reasons. First, Wisconsin lacks jurisdiction to regulate interstate calls. Second, Wisconsin's more restrictive laws frustrate and interfere with the Commission's regulatory scheme – the result of measured and careful balancing of the various consumer and business interests affected by telemarketing. Third, Wisconsin's laws burden interstate commerce in a manner far exceeding the local benefit obtained. Fourth, such laws violate the First Amendment's commercial speech protections because they are more extensive than necessary to protect consumer interests. Finally, with respect to Charter specifically, Wisconsin's laws interfere with Charter's ability to educate consumers about its deployment of advanced broadband services such as high-speed Internet service and Voice over Internet Protocol ("VoIP") telephony service. These restrictions therefore conflict with the policies of Congress and the Commission to promote the availability of broadband services.

The Commission's rules contain significant protections for consumers and an adequate safeguard for EBR customers. Any EBR customer who does not want to receive Charter's calls, need only request they be placed on Charter's internal do-not-call list.

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COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. ("Charter" or the "Company"), by its attorneys, hereby submits these Comments in the above-referenced proceeding. Charter is a broadband communications company with over 6 million customers in 34 states. Through its broadband networks, Charter offers traditional cable video programming (both analog and digital), high-speed cable Internet access, advanced broadband cable services (such as video on demand ("VOD"), high definition television service, and interactive television) and, in some markets, telephony service, primarily through voice over Internet Protocol ("VoIP") technology.

Charter's interest in this proceeding is as a company that desires to market its broadband products and services to its existing customers, which the Commission's rules permit. Charter's experience is that its customers generally welcome being advised of new communications services and products the Company makes available in their area. Moreover, any Charter customer who does not wish to learn about the Company's different broadband-communications

products and services need only request that the Company discontinue such telemarketing calls. Consistent with its obligations under 47 C.F.R. § 64.1200(d)(6), the Company honors all such requests.

For these reasons, Charter wholly endorses the Consumer Bankers Association ("CBA") Petition for Declaratory Ruling ("Petition") that certain sections of the Wisconsin Statutes and Wisconsin Administrative Code are preempted as applied to interstate telephone calls. Specifically, Charter submits these comments in support of CBA's Petition regarding (1) calls made to existing customers for the purpose of offering additional or different products from the same seller company; and (2) calls from an affiliate of the entity with whom the residential customer has an existing relationship. Charter submits that Wisconsin's regulatory regime for telemarketing, if applied to interstate calls, subjects Charter and others to "multiple, conflicting regulations" in the area of interstate telemarketing and is preempted by the Telephone Consumer Protection Act of 1991 ("TCPA") and this Commission's rules.

I. WISCONSIN'S TREATMENT OF CALLS TO EXISTING BUSINESS RELATIONSHIP CUSTOMERS REGARDING DIFFERENT PRODUCTS AND SERVICES IS INCONSISENT WITH THE COMMISSION'S APPROACH

Wisconsin, in its zealousness to protect consumer privacy, has lost sight of the purpose of the EBR exception as established in the TCPA and as implemented by the Commission. The Commission has explained that the existing business relationship ("EBR") "exemption is necessary to allow companies to communicate with their existing customers."[1] Moreover, the Commission recognized that not having an EBR exemption would interfere with companies'

[1] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 F.C.C.R. 14014, 14078 ¶ 112 (2003) (*TCPA Order*).

ability to make new offers to existing customers of "new products, services and pricing plans."[2] The Commission has determined that under the EBR exemption, of primary importance is the relationship between a company and the consumer, not the specifics of the message a company conveys to the customer.[3] Unfortunately, Wisconsin's restrictive approach in implementing the EBR exemption completely undermines the ability of companies to communicate with their customers.

Wisconsin's telemarketing laws, when applied to interstate calls,[4] directly contradict the Commission's rules regarding telephone calls concerning different products and services. The Commission has embraced applying the EBR exemption to the full range of products and services offered by a company.[5] Further, it has specifically recognized the appropriateness of doing so in the telecommunications and cable industries:

> The Commission agrees with the majority of industry commenters that the EBR should not be limited by product or service. In today's market, many companies offer a wide variety of services and products. Restricting the EBR by product or service could interfere with companies' abilities to market them efficiently. Many telecommunications and cable companies for example, market products and services in packages. As long as the company identifies itself adequately, a consumer should not be surprised to receive a telemarketing call from that company, regardless of the product being offered.[6]

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[2] *Id.* ("We are persuaded that eliminating this EBR exemption would possibly interfere with these types of business relationships.").

[3] *Id.* ("[T]he exemption focuses on the relationship between the sender of the message and the consumer, rather than on the content to the message.").

[4] Wis. Stat. § 100.52(7) expressly states that [t]his section applies to any interstate telephone solicitation received by a person in this state." Charter recognizes and accepts that the TCPA and Commission rules expressly allow Wisconsin or any state to impose more stringent regulations on pure intrastate calls.

[5] The EBR exemption allows companies to call certain individuals who have signed up on the National Do-Not-Call Registry.

[6] *TCPA Order*, ¶ 116.

In contrast, and as explained in CBA's Petition, Wisconsin's EBR exemption is much more stringent. Under the Wisconsin Department of Agriculture, Trade & Consumer Protection's ("WDATCP") rules, a "client" to whom it is acceptable to make a telemarketing call, despite that person's enrollment on this state no-call list, is a "person who has a current agreement to receive, from the telephone caller or the person on whose behalf the call is made, property, goods or services **of the type promoted by the telephone call**."[7] WDATCP interprets this regulation very narrowly. Their regulations provide an example of the scope of that narrowness:

> [I]f a local telephone service provider encourages a current customer to purchase other local telephone services, the customer is a current "client" under this definition. But a local telephone service customer is not a current "client" when the local telephone service provider encourages that customer to purchase long distance telephone services.[8]

WDATC staff has provided informal advice that confirms Wisconsin's strict approach.[9] WDATC staff advised that while a cable company's calls to subscribers of its basic analog tier cable television service to inform them about receiving digital tier cable television service would most likely be acceptable, calling existing cable television customers to inform them about high speed Internet service or even special video premium or pay-per-view packages would not be acceptable. By drawing these distinctions, Wisconsin eviscerates the ability of businesses to inform customers about a company's related products and services, something the Commission expressly permits. This not only contravenes the Commission's approach in allowing a company

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[7] Wisc. Admin. Code § 127.80(2) (2004) (emphasis added).

[8] *Id.* note.

[9] The following information is based upon a call with WDATC staff on August 20, 2004 to obtain further information on the parameters of Wisc. Admin. Code § 127.80(2).

to call EBR customers about **any** of its product or services, it provides virtually no leeway to call EBR customers about **related** products and services.

Charter's use of the EBR exemption is limited. The Company makes calls primarily to existing customers. It rarely makes calls to former customers (within the allotted 18 months) [10] and it does not make telemarketing calls to individuals who have inquired about a product in the previous three months as permitted by the Commission's EBR exemption.[11]

As the Commission recognized in the *TCPA Order*, cable companies often market products and services in packages. That approach is reflective of Charter's strategy as it tries to reach existing customers to advise them of additional communications-related products and services they can receive. For example, current video customers may not be aware of their ability to obtain high speed Internet access via cable modem in addition to their video service. Calling such customers provides a focused and highly efficient method to provide them with useful information to make educated choices on the Internet service they desire. Moreover, Charter's calls to existing customers are about related services – broadband services offered over the Company's cable infrastructure. Charter has no intention of calling customers about non-communications services.

II. WISCONSIN'S BRIGHT-LINE PROHIBITION ON AFFILIATED COMPANY USE OF THE EBR EXEMPTION IS INCONSISTENT WITH THE COMMISSION'S APPROACH

The Commission has concluded that a company's EBR with a customer can in some circumstances, extend to a company's affiliates and subsidiaries. The Commission has not adopted a bright-line test for determining when an affiliated entity can rely on a company's EBR.

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[10] Charter has on occasion called former customers to inquire about why they cancelled service.

[11] Charter responds to inquiries but does not otherwise call these individuals.

Instead, it follows an approach also taken by the Federal Trade Commission ("FTC"), which focuses on the reasonable expectation of consumers:

> [C]onsistent with the FTC's amended Rule, affiliates fall within the established business relationship exemption only if the consumer would reasonably expect them to be included given the nature and type of goods or services offered and the identity of the affiliate. This definition offers flexibility to companies whose subsidiaries or affiliates also make telephone solicitations, but it is based on consumers' reasonable expectations of which companies will call them. ... [C]onsumers often welcome calls from businesses they know. A call from a company with which a consumer has not formed a business relationship directly, or does not recognize by name, would likely be a surprise and possibly an annoyance.[12]

The FTC's approach also sheds some light on what this "reasonable expectation" standard entails. The FTC has stated that it considers relevant factors to include whether an affiliate's goods or services are similar and whether the affiliate's name is identical or similar to the seller's name.[13]

Wisconsin's approach, in contrast, creates a bright-line prohibition, making any affiliate EBR use unlawful – without regard for consumer expectations and without taking into account the relationship between the affiliate and the EBR company. As CBA points out, Wisconsin's statute specifies that an EBR exemption "does not apply if the recipient is a current client of an affiliate of such a person, but is not a current client of such a person."[14] This restriction goes too

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[12] *TCPA Order*, ¶ 117. *See also* 47 C.F.R. § 64.1200(d)(5).

[13] Federal Trade Commission, *Complying With the Telemarketing Sales Rule* at 43, *at* http://www.ftc.gov/bcp/conline/pubs/buspubs/tsrcomp.htm. The FTC provides specific examples, stating that "[a] consumer who purchased aluminum siding from 'Alpha Company Siding,' a subsidiary of 'Alpha Corp.', likely would not be surprised to receive a call from 'Alpha Company Kitchen Remodeling,' also a subsidiary of 'Alpha Corp.' The name of the seller and the subsidiary are similar, as are the type of goods or services offered – home repair and remodeling." *Id.* at 44.

[14] Wisc. Stat. § 100.52 (2004).

far. It applies regardless of whether the affiliate calling operates under the same brand (in which case the recipient of the call may not even know that it is a "different company" calling), or offers similar and complementary services that may be provided in a packaged bundle to the customer.

Wisconsin's outright prohibition on an affiliate's use of an EBR exemption is particularly inappropriate in Charter's situation. Charter provides its broadband communications services under the same brand. Accordingly, whether the Company's customers receive cable television, high speed-Internet, or telephony services, they understand the provider for each service to be "Charter." In provisioning its various services, however, Charter has numerous affiliates who all work closely together to provide, or make available, bundled communications packages to customers, all utilizing the same cable system infrastructure.[15] For those reasons identified in Part I, *supra*, a Charter affiliate should not be precluded from educating its customers in a cost-effective manner about the availability of additional communications services. Further, because Charter's broadband services are so related, the Company's policy is that a company-specific do-not call request to one affiliate is honored by all other Company affiliates.

III. WISCONSIN'S TELEMARKETING RESTRICTIONS ARE CONTRARY TO THE PRO-COMPETITIVE BROADBAND POLICIES OF BOTH CONGRESS AND THE COMMISSION

Wisconsin's restrictive telemarketing rules, when applied to interstate calls, are particularly egregious for cable and telecommunications companies attempting to market their broadband services to existing customers. By prohibiting Charter and its affiliates from making interstate calls to its customers about its broadband and advanced service offerings, Wisconsin is

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[15] For example, different areas or cities in a state may each be served by a different Charter cable television affiliate. In addition, customers in those areas may receive telephony service from a different Charter affiliate.

interfering with Congressional and Commission policies to encourage competition in, and further deployment of, broadband services. The fundamental purpose of the 1996 Telecommunications Act was to "provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and service to all Americans ..."[16] These policies and goals are consistent with the preemption of Wisconsin's telemarketing rules.

Congress stated in Section 230 of the 1996 Act that it's the policy of the United States "to promote the continued development of the Internet ..." and to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State Regulation.*"[17] In Section 706 of the 1996 Act, Congress directed the Commission to encourage the provision of new technologies and services to the public, including broadband deployment, through a wide array of methods.[18] Moreover, Congress clearly stated that the purpose of the 1984 Cable Act was to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public ...and [to] minimize unnecessary regulation."[19]

The Commission has repeatedly recognized and implemented such policies to encourage the deployment of broadband services and to prohibit or limit inappropriate regulation of such services. In 1998, the Commission noted in its Section 706 Notice of Inquiry that "[w]e underscore our commitment to [...] seeking to promote the deregulatory and pro-competitive

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[16] H.R. CONF. REP. NO. 104-458, at 113 (1996).

[17] 47 U.S.C. § 230(b)(2) (emphasis added).

[18] 47 U.S.C. § 157 nt.

[19] 47 U.S.C. §§ 521(4), (6).

goals of the of the 1996 Telecommunications Act ..."[20] The Commission has promoted cable-delivered broadband services in a "minimally regulated space"[21] and has worked to encourage the development of competition to promote broadband deployment.[22] In fact, the Commission has found one of its principle goals is to promote the deployment of broadband services across multiple platforms, including cable networks, "in a minimal regulatory environment."[23] Very recently, the Commission relied on sections 230 and 706 of the 1996 Act to express its preference for a "national policy" and to "encourage the deployment of advanced telecommunications capability to all Americans" when reaching its decision to preempt Minnesota's regulation of VoIP service.[24]

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[20] *In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, 13 F.C.C.R. 15280, ¶ 5 (1998).

[21] *See* Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the National Summit On Broadband Deployment, Washington, D.C., as prepared for delivery (Oct. 25, 2001) *available at* http://www.fcc.gov/Speeches/Powell/2001/spmkp110.html.

[22] *See In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Notice of Inquiry, 15 F.C.C.R. 19287, ¶ 3 (2000) (wherein the Commission stated that it desired a record regarding all high-speed platforms to reduce barriers to entry, to encourage investment, and to facilitate deployment of high-speed services across all technologies).

[23] *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Service; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, FCC 02-42 at ¶ 5 (Feb. 12, 2002). *See also Nat'l Cable & Telecomm. Ass'n v. Gulf Power*, 534 U.S. 327, 339 (2002) (observing that subjecting a cable operator to additional regulation when it provides new services "would defeat Congress' general instruction to the FCC to 'encourage the deployment' of broadband Internet capability and, if necessary, 'to accelerate deployment of such capability by removing barriers to infrastructure investment.'" (quoting 47 U.S.C. § 157 nt.).

[24] *See In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 F.C.C.R. 22404, ¶¶ 33-37 (*Vonage Order*).

The Commission, consistent with Congress' finding that "[i]ndividuals' privacy rights, public safety interests, and commercial freedom of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices,"[25] produced a reasonable regulatory framework in the *TCPA Order*. The Commission's resulting rules reasonably permitted companies like Charter to telemarket its new products and services, including high speed Internet and VoIP, to its existing customers. Wisconsin's restrictions, however, are not so reasonable and represent a state specific barrier to a national policy.

IV. THE COMMISSION SHOULD PREEMPT WISCONSIN'S MORE RESTRICTIVE TELEMARKETING LAWS

The Commission's rules preempt Wisconsin's more restrictive laws prohibiting Charter from calling its customers to inform them about related broadband products and services and prohibiting EBR calls from any of a company's affiliates. In the *TCPA Order* the Commission appropriately recognized that "any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted."[26] Despite reaching that conclusion, the Commission decided not to preempt more stringent state rules and instead stated it would consider "any alleged conflict" between its rules and state laws on a case-by-case basis through the declaratory ruling process.[27] As explained above, the CBA Petition identifies actual conflicts between the Commission's rules and Wisconsin's laws. Absent preemption, companies like Charter could be subject to myriad inconsistent regulatory requirements when engaged in interstate telemarketing. The Commission's tentative conclusions regarding preemption in the *TCPA Order* were correct and

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[25] 47 U.S.C. § 227 nt. (incorporating Congressional Findings of TCPA).

[26] *TCPA Order*, ¶ 84.

[27] *Id.*

the Commission should declare Wisconsin's more stringent telemarketing laws as applied to interstate calls to be preempted.

A. Wisconsin is Without Jurisdiction to Regulate Interstate Calls

In the *TCPA Order*, the Commission properly recognized the longstanding rule that "states have had jurisdiction over only intrastate calls, while the Commission has had jurisdiction over interstate calls."[28] Congress first established this division in the Communications Act of 1934 when it provided the Commission with jurisdiction over "all interstate and foreign communication" and "all persons engaged ... in such communication" while leaving to the states "jurisdiction with respect to intrastate communications service ..."[29] Congress, in enacting the TCPA, was keenly aware of the states' lack of jurisdiction over interstate calls. Indeed, that was a key reason why Congress enacted the TCPA – because it found "Federal law [was] needed" to keep "telemarketers [from] evad[ing state] prohibitions through interstate operations."[30] Congress, appropriately believing that the states did not have jurisdiction over interstate calls, found it unnecessary to include any preemption of state provisions regarding **interstate** calls. Instead, Congress only found it necessary to preserve state authority over more restrictive **intrastate** requirements.[31] Commission precedent demonstrates that state regulation of interstate communications, where it

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[28] *Id.* at ¶ 83 (citing *Lousiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355 (1986) and *Smith v. Ilinois Bell Telephone Co.*, 282 U.S. 133 (1930)).

[29] 47 U.S.C. §§ 152(a) and (b).

[30] 47 U.S.C. § 227 nt.; *see also TCPA Order*,¶ 82 ("Congress [enacted the TCPA] based upon the concern that states lack jurisdiction over interstate calls") (citing S. Rep. No. 102-178 at 5 ("Federal action is necessary because States do not have jurisdiction to protect their citizens against those who ... place interstate calls."); Cong. Rec. S16205 (Nov. 7, 1991) (remarks of Sen. Hollings) ("State law does not, and cannot, regulate interstate calls.)).

[31] *See* 47 U.S.C. § 227(e) ("[N]othing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations.)

conflicts with federal regulations or policy, must be preempted. The FCC very recently reached this conclusion when it preempted state law regulation of certain VoIP services largely because these services are interstate and not intrastate.[32] It is therefore evident that Wisconsin lacks authority to enforce its more stringent laws as applied to interstate telemarketing.

B. Wisconsin's More Restrictive Regulation of Interstate Calls Conflicts with and Interferes with the Commission's Regulatory Scheme

The Commission's rules, as promulgated in the *TCPA Order*, contain a thoughtful and careful balancing of competing interests, consistent with Congress' intent. As discussed above, Wisconsin's telemarketing laws as identified in the CBA Petition, conflict with the Commission's rules and policies as applied to interstate calls and they fall outside of the TCPA's savings clause for states' more restrictive intrastate regulations. It is well established that "[t]he statutorily authorized regulations of an agency will preempt any state or local law that conflicts with the regulations or frustrates the purposes thereof."[33] Moreover, it is of no significance that Congress did not expressly state that more restrictive interstate regulations would be preempted as "[a] pre-emptive regulation's force does not depend on express congressional authorization to displace state law."[34] Indeed, even where Congress has preserved some role for the states (as it did in the TCPA for intrastate calls), the Supreme Court has found that "state law is nullified to the extent that it actually conflicts with federal law."[35]

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[32] *See Vonage Order*, ¶¶ 18-19. In the *Vonage Order*, the Commission actually determined the VoIP service at issue to be a "jurisdictionally mixed service" – involving both interstate and intrastate aspects – yet still exercised its preemption authority – consistent with Commission precedent. *Id.*

[33] *City of New York v. FCC*, 486 U.S. 57, 64 (1988).

[34] *Id.* (quoting *Fidelity Federal Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 154 (1982)).

[35] *De la Cuesta*, 458 U.S. at 153.

Permitting Wisconsin's rules to remain effective creates an untenable situation for companies like Charter. Absent preemption of more restrictive laws governing interstate telemarketing, Charter will be subject to, and must comply with, a patchwork of state regulations. While Congress intended to protect consumers with the TCPA, it also recognized the need to "permit[ ] legitimate telemarketing practices."[36] Wisconsin's rules not only directly conflict with the Commission's rules, they interfere with the very purpose of the Commission's rules – to establish a uniform national, regulatory scheme – specifically excepting only more stringent intrastate regulations.

C. Wisconsin's More Stringent Telemarketing Laws Violate the Commerce Clause and the First Amendment

In reaching a decision on preemption, the Commission should consider the Commerce Clause and First Amendment implications of Wisconsin's laws. The Commerce Clause grants Congress the power "[t]o regulate Commerce ... among the several States."[37] The Commerce clause also has a "negative aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce."[38] If a state's actions burden interstate commerce in a manner "clearly excessive in relation to the putative local benefits," the offending state laws must be struck down as a violation of the negative commerce clause.[39] Similarly, under First Amendment analysis, one of the key factors in determining whether the regulation of commercial speech is constitutional is "whether the regulation directly advances the

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[36] *See supra* note 25 and accompanying text.

[37] U.S. Const., art. 1, § 8 cl. 3.

[38] *Oregon Waste Sys. v. Dep't of Envtl. Quality*, 511 U.S. 93, 98 (1994).

[39] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

governmental interest asserted, and whether it is not more extensive than necessary to serve that interest."[40]

Wisconsin's regulation is both "clearly excessive" under the Commerce clause and "more extensive than necessary" under First Amendment jurisprudence. Charter is not contesting the Do Not Call laws generally or the ability of states to impose more stringent intrastate telemarketing restrictions. For interstate calls, however, the Commission's rules adequately protect Wisconsin consumers. Wisconsin's EBR exemption is far too narrow and prohibits calls that in most instances are made to willing recipients.[41] Moreover, an EBR customer can simply request to be placed on a company's Do Not Call list, to override the EBR exception.[42]

CONCLUSION

For the reasons set forth above, Charter respectfully submits that the Commission should preempt those Wisconsin telemarketing laws regulating interstate communications that are more restrictive than the Commission's rules.

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[40] *Central Hudson Gas & Elec. v. Pub. Serv. Comm. of N.Y.*, 447 U.S. 557, 566 (1980).

[41] *See Mainstream Marketing Services, Inc. v. FTC*, 358 F.3d 1228, 1242 (10th Cir. 2004) (finding national do-not-call registry narrowly tailored because "it restricts **only calls that are targeted at unwilling recipients**") (emphasis added).

[42] *See, e.g., Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 164, 168-69 (2002) (striking down permit requirement for solicitors when other means of protecting unwilling listener were available).

Respectfully submitted,

CHARTER COMMUNICATIONS, INC.

/s/

By: _____

Wesley R. Heppler
Timothy P. Tobin
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
(202) 659-9750

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Attorneys for Charter Communications, Inc.